

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
<b>WILLIAM CORNEL CULVER,</b>	)	CASE NO. <b>10-93189</b> - MHM
	)	
Debtor.	)	

**SANCTIONS ORDER**

Hearing was held June 13, 2011, for Debtor's attorney to show cause why she should not be sanctioned for her failure in her duties under the Bankruptcy Code and in her duty to assist Debtor in fulfilling his duties under the Bankruptcy Code (the "Show Cause Hearing"). The record shows that Debtor commenced this Chapter 7 case November 2, 2010, with the filing of a skeletal petition.<sup>1</sup> At the time of filing, Debtor paid no portion of the filing fee and, instead, filed an *Application to Pay Filing Fee in Installments* (Doc. No. 2), which was granted by order entered November 3, 2010 (Doc. No. 5). Debtor failed to comply with the schedule of payments for the filing fee, but the filing fee was paid in full May 17, 2011. On June 3, 2011, Debtor's attorney belatedly filed a Bankruptcy Rule 2016 disclosure statement showing that she was paid \$350 plus \$199 for the filing fee (Doc. No. 31). Pursuant to Bankruptcy Rule 1006(b)(3), a debtor's attorney may not accept *any* payment until the filing fee has been paid in full. Additionally, when Debtor's attorney has collected the full filing fee from Debtor in advance, Debtor's attorney is not only not privileged to withhold payment of the filing fee and instead file an application to pay the filing fee in installments, but also has an affirmative obligation under Rule 1006 not to do so.

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<sup>1</sup> Section 521(a) and Bankruptcy Rule 1007(b) require a debtor to file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs (the "Schedules"). Section 521(a) also requires the filing of Debtor's pay advices. When the bankruptcy petition is not accompanied by the Schedules, it is termed a "skeletal" petition.

The record also shows that a *Notice of Meeting of Creditors* was entered November 3, 2010, scheduling the §341 meeting of creditors for December 10, 2010 (Doc. No. 3). Debtor failed to appear at the §341 meeting of creditors and at the reset §341 meeting of creditors. On December 7, 2010, Debtor's attorney filed on behalf of Debtor a motion to voluntarily dismiss this case "pursuant to 11 U.S.C. §1307(b)." Debtor's attorney failed to schedule a hearing on the motion to dismiss.<sup>2</sup> As §1307(b) provides no basis for dismissing a *Chapter 7* case, Debtor's motion to voluntarily dismiss was denied.

On January 6, 2011, the U.S. Trustee filed a response to Debtor's motion to dismiss. The U.S. Trustee notes that Debtor's attorney, **Kim J. King and J. King & Associates, P.C.**, failed to file the disclosure of compensation required by Bankruptcy Rule 2016 (the "Fee Disclosure Statement"). The U.S. Trustee also noted that Debtor failed to file the Schedules and the prepetition credit counseling certificate. On April 26, 2011, after several fruitless attempts to persuade Debtor's attorney to file the Fee Disclosure Statement, the U.S. Trustee filed a motion to compel Debtor's attorney to file the Fee Disclosure Statement and also to review and require Debtor's attorney to disgorge any fees she has received.

On June 3, 2011, just prior to the Show Cause Hearing, Debtor's attorney filed on behalf of Debtor a motion to dismiss (Doc. No. 30) (the "Second Motion to Dismiss"), apparently failing to realize that this case had already been dismissed by order entered May 5, 2011 (Doc. No. 27). The Second Motion to Dismiss also alleges no grounds for dismissal. Also, Debtor's attorney filed a *Notice of Withdrawal of Appearance* (Doc. No. 32), stating, "She is Withdrawing her Appearance as Counsel on behalf of the Debtor

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<sup>2</sup> A debtor who chooses to place himself in bankruptcy does not conversely possess the unfettered choice to dismiss a Chapter 7 bankruptcy proceeding. *In re Klein*, 39 B.R. 530 (Bankr. E.D. N.Y. 1984); *In re Blackmon*, 3 B.R. 167 (Bankr. S.D. Ohio 1980). Section 707(a) requires a party, including a debtor, to show cause for dismissal of a Chapter 7 bankruptcy case; a history of abuse will support a denial of a debtor's motion to dismiss. *Dionne v. Simmons*, 200 F. 3d 738 (11th Cir. 2000).

with the consent of the Debtor.” The alleged consent of Debtor was not evidenced by any signature of Debtor. Additionally, Debtor’s attorney’s attempted withdrawal as counsel for Debtor fails to comply with the requirements of BLR 9010-5.

Debtor’s attorney and the attorney for the United States Trustee appeared at the Show Cause Hearing. To all of the errors and omissions, Debtor’s attorney’s defense is that the U.S. Postal Service has not been properly delivering her mail, either to her post office box or her street address.<sup>3</sup> When Debtor’s attorney failed to receive the *Notice of Meeting of Creditors*, however, she should have investigated further and consulted the docket of this case (which is available to her online as an unregistered user at <http://pacer.psc.uscourts.gov>) early and often instead of ignoring developments in the case.

Based upon the record in this case, the presentation by the U.S. Trustee and the responses of Debtor’s attorney at the Show Cause Hearing, and for the reasons more fully set forth on the record at the hearing, it is hereby


**ORDERED** that **Kimberly (“Kim”) J. (“Joy”) King and J. King & Associates, P.C.**, are barred from filing any bankruptcy case in this district until Kimberly Joy King has completed six hours of continuing legal education regarding Chapter 7 of the Bankruptcy Code and six hours of continuing legal education regarding Chapter 13. To verify her completion of the required continuing legal education, Ms. King shall file a certificate signed by her under oath or under penalty of perjury, together with a copy of the certificate issued by any educational organization providing the required continuing legal education.

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<sup>3</sup> "The common law has long recognized a rebuttable presumption that an item properly mailed was received by the addressee. (Citations omitted.) The 'presumption of receipt' arises upon proof that the item was properly addressed, had sufficient postage, and was deposited in the mail. The presumption is, of course, rebuttable." *Konst v. Florida East Coast Railway Co.*, 71 F. 3d 850 (11th Cir. 1996). See also *Nikwei v. Ross School of Aviation, Inc.*, 822 F. 2d 939 (10<sup>th</sup> Cir. 1987). The presumption of proper notice cannot be rebutted solely by allegations of non-receipt. *Moody v. Bucknum*, 951 F.2d 204 (9th Cir. 1991).

**The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor's attorney and the U.S. Trustee.**

IT IS SO ORDERED, this the 21<sup>st</sup> day of June, 2011.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE